IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.109 OF 1994

Lalitkumar Ratanshi & Co. .. .. .. Appellants

V/s.

Union of India, through the General Manager, Central Railway. .. .. .. Respondents

None for the Appellants.

Mr.A.N. Samant for Respondents.

CORAM : SMT. ROSHAN DALVI, J.

DATED : 13th April, 2007

ORAL JUDGMENT :

1. The Appellants filed a Suit initially in the Bombay City Civil Court, which was later transferred to the Railway Claims Tribunal, Bombay. The Suit was in respect of the delivery of consignment of 120 bags of wheat weighing 120 quintals under Railway Receipt No.781839 and Invoice No.16, dated 20th November 1978.

2. The Appellants gave a Notice under Section 78-B of the Indian Railway Act and Section 80 of the Civil Procedure Code to the Respondents in respect of Railway Receipt No.781838 instead. The Appellants led evidence also in respect of the wrong Railway Receipt and hence, their claim has been dismissed.

3. It is their case that there were two consignments of the same weight and for the same value. The only difference was that of the Railway Receipt number. Hence, their claim should not have been dismissed and they should have been entitled to claim on the basis of the correct Railway Receipt. The Appellants claim an accidental error in producing the incorrect documents and giving an incorrect notice to the Government.

4. Counsel on behalf of the Government has fairly conceded that if the correct original documents are produced and evidence led, the Appellants would be entitled to get their claim proved.

5. In the ordinary course, the Appellants (original Plaintiffs), in the interest of justice, can be allowed to lead evidence with regard to

the correct documents. However, since the statutory notices under the Indian Railway Act as well as Civil Procedure Code have also not been given in respect of the correct Railway Receipts and the Suit is not filed in respect thereof, no purpose will be served in remanding the Suit also. In fact, it is seen that based upon the correct Railway Receipt, another Suit should have been filed by the Plaintiffs within the period of limitation. Neither statutory notice is given with regard to claim under the correct Railway Receipt nor is the Suit filed thereunder.

6. Even the Written Statement of the Defendants is in respect of the incorrect Railway Receipt. Consequently, remanding the matter for fresh trial will also not serve any purpose.

7. Consequently, the Appeal is dismissed. No order as to costs.

(SMT. ROSHAN DALVI, J.)